

REMARKS

Although not believed to be necessary for patentability, without prejudice, and in order to expedite the passing of the present application to issuance, Claim 1 has been amended by incorporating the subject matter of claim 9. Claim 9 has been canceled.

Care has been taken not to introduce any new matter.

The Present Invention

The present invention relates to:

- a *concentrated perfume composition* that also contains a dye;
- a method of manufacturing a fabric softening composition from the concentrated perfume composition; and
- a fabric softening composition so produced.

The present invention is directed to a concentrated perfume and dye composition, which is used to give an exact dosage of perfume and dye in a fabric softening composition. Simplified automated manufacture of fabric softening compositions is achieved by addition to a base containing fabric softening agents the concentrated perfume composition of the invention. The concentrated perfume composition is specially formulated to avoid instability problems to which such compositions are generally prone.

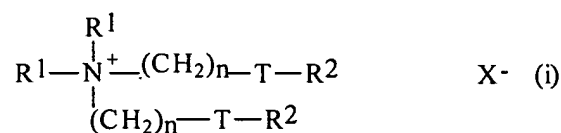
Specifically, the inventive *concentrated perfume composition* is a water-in-oil micro-emulsion comprising:

- (a) 15-95 wt. % lipophilic perfume, (b) 0.05-5 wt. % water-soluble dye, (c) 4-50 wt. % of a stabilizing agent comprising a cationic stabilizing agent, (d) a water miscible solvent,

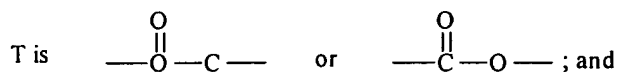
and (e) 0.1-20 wt. % water. The stabilizing agent (1) must be cationic and (2) must have an $L\alpha$ to $L\beta$ transition temperature of 45°C or below and (3) it must have the following general formula:



Wherein R^1 and R^2 are independently C_1 - C_6 alkyl, alkenyl, substituted alkyl or alkenyl groups, or hydroxyalkyl groups and R^3 and R^4 are independently C_8 - C_{28} alkyl, alkenyl, substituted alkyl or alkenyl groups, or hydroxyalkyl groups or, a compound of general formula (i)

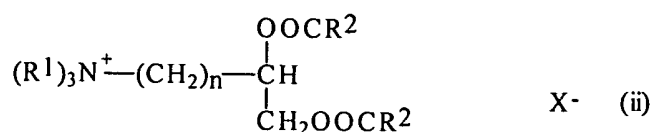


wherein each R^1 group is independently selected from C_{1-4} alkyl, hydroxyalkyl or C_{2-4} alkyl groups; and wherein each R^2 group is independently selected from C_{8-28} alkyl or alkenyl groups; X^- is chloride or methosulphate;



n is an integer from 0-5;

or, a compound of general formula (ii)



wherein R^1 , n , R^2 and X^- are as defined above

The specified cationic stabilizing agent must meet the claimed transition temperature requirement to be used according to the invention. The premix containing cationic stabilizing agent having $\text{L}\alpha$ to $\text{L}\beta$ transition temperature provides a stable pre-mix of perfume and dye. Compounds that are cationic and meet the general structural limitations but which do not meet the transition temperature requirements are not cationic stabilising agents according to the present invention, as they would not promote stability of the concentrated perfume composition.

The Present Invention Is Patentable Under 35 USC § 103 Over DE 19 751 151 Because Not All Cationic Stabilizing Agents Which Meet the Claimed Structural Requirements Will Also Meet the Claimed Phase Transition Limitations

In order to make out a *prima facie* case of obviousness, an Office Action must show that a cited reference discloses or suggests all the limitations of the invention as claimed, i.e., the invention must be viewed as a whole. Applicants respectfully submit that a *prima facie* case of obviousness has not been made out, for the following reasons.

According to the Final Office Action, as long as any of the cationic agents of the prior art meet both the structural limitations and the phase transition limitations, a *prima facie* case of obviousness exists. Applicants respectfully submit that, regardless of whether the Final Office Action statement is correct, neither the Office Action nor the cited reference disclose or suggest that the prior art meets the phase transition limitations (regardless of whether or not it meets the structural limitations).

Claims 1-14 were rejected under 35 USC 103(a) as being unpatentable over **DE 19 751 151 A1** ("DE '151") because, according to the First Office Action, the reference discloses perfume oil micro-emulsions comprising 10-50% by weight of perfume oil, 1-10% by weight of an oil component, 1-30% of an alkylpolyglycoside emulsifier and, optionally, a cationic co-emulsifier (p.4, lines 5+); Suitable cationic emulsifiers include ester quats (p. 4, lines 52+), and mono- or di(long chain) quats.

The first Office Action concludes that it would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in a surfactant composition.; The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary.

The present invention is distinguishable over DE'151. Applicants agree with the first Office Action that, this reference differs from the claimed subject matter in that it does not disclose a composition that reads on Applicant's claims with sufficient specificity to constitute anticipation. Moreover, Applicants respectfully submit that the rejection, as maintained in the Final Office Action, does not address the fact that DE '151 fails to disclose or suggest a critical element of the present invention, which

contributes to the stability of the present concentrated perfume and dye compositions. **Specifically, the reference fails to disclose or suggest that the stabilizing agent have an $L\alpha$ to $L\beta$ transition temperature of 45°C or below.** As stated in Applicant's specification, not all cationic stabilizing agents that meet the structural limitations meet the $L\alpha$ to $L\beta$ transition temperature limitation (pp. 7-8). As such, a *prima facie* case of obviousness has not been set forth.

The cited reference, DE '151, relates to fabric softeners of which a perfume micro-emulsion is a component. A water-in-oil micro-emulsion comprises perfume, up to 10 wt.% of non-ionic or cationic emulsifiers (**but is silent regarding phase transition temperature**), and 20-89% water. Said composition is then added to a fabric-softening composition where the fabric softening agents are chosen from quaternary ammonium or amine salts. In DE '151, the quaternary ammonium compounds are present in the final fabric softener, but are not present in the perfume micro-emulsion component. Furthermore, the optional non-ionic or cationic emulsifier disclosed in DE '151, if present, is in a smaller amount than required to stabilize the concentrated perfume composition of the present invention.

Although the cited reference permits the *optional* use of up to 10 % cationic emulsifier, such emulsifier is not required for achieving a *stable perfume composition* and the amount of cationic emulsifier permitted is less than that required for the present invention. Moreover, there is no hint in the cited reference that said quaternary ammonium and amine salts, having an $L\alpha$ to $L\beta$ transition temperature of 45°C or below, can be advantageously used as a stabilizing agent for a micro-emulsion.

The Office Action has not provided a reason to provide only the cationic stabilizing agents that have the claimed $L\alpha$ to $L\beta$ transition temperature. The mere fact

that the reference could be modified as proposed in the Office Action is not sufficient to establish a *prima facie* case of obviousness. See In re Fritch, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). The Office Action must explain why the reference would have suggested to one of ordinary skill in the art the desirability of the modification. Id. at 1783-84. The Office Action has not provided such an explanation.

The subject matter of claims 1-7 and 10-14, as amended, cannot be deduced from the cited document and is, therefore, not obvious over DE'151.

Reconsideration of the rejection is respectfully requested in view of the above claim amendments and remarks. It is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance, Applicant's undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,



Ellen Plotkin
Registration No. 36,636
Attorney for Applicant(s)

(201) 840-2253